IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	
	Case No. 22-31641-MVL-7
GOODMAN NETWORKS, INC., AND GOODMAN NETWORKS, INC. DBA GOODMAN SOLUTIONS,	U.S. Bankruptcy Court 1100 Commerce Street Dallas, Texas 75242
Debtor.	Thursday, March 28, 2024 4:00 P.M.

TRANSCRIPT OF BENCH RULING
RE: MOTION TO COMPROMISE CONTROVERSY WITH MULTI-PARTY SETTLEMENT CONCERNING PROPERTY OF THE ESTATE FILED BY TRUSTEE SCOTT M. SEIDEL (502)

BEFORE THE HONORABLE MICHELLE V. LARSON
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES ON NEXT PAGE.

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For FedEx Supply Chain Logistics and Electronics, Inc.:	Butler Snow LLP BY: ADAM M. LANGLEY, ESQUIRE 6075 Poplar Avenue, Suite 500 Memphis, Tennessee 38119
For UMB Bank Indentured Trustee and The Majority Noteholder Group:	Hunton Andrews Kurth LLP BY: PAUL N. SILVERSTEIN, ESQUIRE BRIAN CLARKE, ESQUIRE 200 Park Avenue New York, New York 10166 Stonecipher Law Firm BY: ERIC A. SCHAFFER, ESQUIRE 125 First Avenue Pittsburgh, Pennsylvania 15222
For Hudson Clean Energy Enterprises, LLC, and All Other Third-Party Moving Defendants:	Jordan, Lynch & Cancienne PLLC BY: JOSEPH W. GOLINKIN, II, ESQUIRE 1980 Post Oak Boulevard, Suite 2300 Houston, Texas 77056
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I N D E X

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Motion to compromise controversy with Multi-Party
Settlement Concerning Property of the Estate
Filed by Trustee Scott M. Seidel (502)

Court's Ruling - Granted **7**

Objection to Motion to compromise controversy with
Multi-Party Settlement Concerning Property of the Estate
Filed by Third-Party Litigation Defendants (514)

Court's Ruling - Overruled **7**

(Proceedings commenced at 4:00 p.m.)

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session; the Honorable Michelle Larson presiding.

THE COURT: Please be seated.

Good afternoon, everyone. We're here on our 4:00 docket. First, thank you to all the parties. I know I had to push this by an hour. I appreciate your understanding. I'll go ahead and call the one matter on the docket, which is Case Number 22-31641, Goodman Networks, Inc. and Goodman Networks.

We're primarily here with respect to the Court's bench ruling on the motion to compromise controversy with multi-party settlement concerning the property of the estate that was filed by Chapter 7 Trustee Scott Seidel. Given that there might be a little discussion with respect to the order afterwards, I'm going to go ahead and take any appearances now.

If you are on the phone, you may have to press *6 to unmute. So I'll take appearances now.

MR. RUKAVINA: Your Honor, good afternoon.

Davor Rukavina, lead counsel for the Trustee. I am traveling. I do not have a copy of the proposed order with me. I apologize. Hopefully, my partner, Thomas Berghman is on.

THE CLERK: He is.

THE COURT: I think he is.

MR. BERGHMAN: Good afternoon, Your Honor.

Thomas Berghman. I'm on, as well, and Mr. Seidel is on, as well.

THE COURT: All right. Thank you all.

Anyone else wish to make an appearance?

MR. SILVERSTEIN: Your Honor, it's Paul Silverstein and Brian Clarke.

MR. PULMAN: Good afternoon, Your Honor.

Randy Pulman for James Goodman.

MR. GOLINKIN: Jeb Golinkin for the moving defendants.

MR. LANGLEY: Good afternoon, Your Honor.

Adam Langley, Butler Snow, for FedEx Supply Chain Logistics and Electronics, Inc.

MR. SCHAFFER: Your Honor, it's Eric Schaffer here on behalf of UMB Bank as Indenture Trustee.

THE COURT: Anyone else wish to make an appearance?

(No audible response)

THE COURT: All right. Give me one moment.

And my audio is a little cut off, but I know that Mr. Silverstein and Mr. Clarke represent the majority bondholders as well as special counsel to UMB, so I'll go ahead and state that for the record.

MR. SILVERSTEIN: Thank you, Your Honor. For some reason, I thought I said that. Maybe you didn't hear me. I'm having computer problems.

THE COURT: No problem. It may have just gotten a little but cut off and choppy in the audio, but I appreciate it. Thank you.

MR. SILVERSTEIN: Thank you.

THE COURT: All right. With respect to the Court's ruling, my day yesterday and my day today got a little out of control and away from me, so I will probably be a little bit more verbose and less polished than I otherwise would like to be, for sake of this record, but I also wanted to get it out timely for sake of the parties, given the amount of work that has gone into it by everyone to date.

So I'll just go ahead and get started.

Before the Court is the Trustee's motion under Bankruptcy Rule 9019 for approval of a multi-party settlement regarding property of the estate, which I'll call the "9019 motion." And that was filed at Docket 502.

That motion contemplates the approval of a proposed compromise by and between the Trustee as a representative of the estate and the subsidiaries, the bondholders, FedEx Supply Chain Logistics and Electronics, and ARRIS Solutions: to resolve certain pending disputes and litigation, to avoid future litigation regarding the same, to enable the Trustee to commence making distributions from the estate, and to lay to rest what the Trustee has dubbed "fratricidal intercreditor disputes" that have come to dominate these proceedings for most

of the past 18 months.

There is one objection to the motion by certain third-party litigation defendants, namely 18920 NW 11th, Steven Zakharyayev, Evelina Pinkhasova, Hudson Clean Energy Enterprises, Alliance Texas Holdings, Mr. Neil Auerbach, Ms. Judith Auerbach, Auerbach Partners, L.P., Auerbach Childrens Dynasty Trust u/a/d October 9, 2012, and Auerbach Family Dynasty Trust u/a/d October 9, 2012.

That objection was docketed at ECF 514. The Court will refer to the objecting parties as the "objecting adversary defendants." I probably should have chosen a shorter name.

The replies were filed by numerous parties. The Court has reviewed each of the pleadings carefully and has heard and considered the Trustee's evidence as well as the respective arguments of counsel. For the reasons explained more fully hereafter, the Court will grant the 9019 motion and overrule the objection.

The following constitutes the Court's findings of fact and conclusions of law, pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rule 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure. To the extent any of the following findings of fact and conclusions of law are vice versa, they will be adopted as such.

The Court has jurisdiction over this case pursuant to

28 U.S.C. Sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2), and venue is proper in this district pursuant to 28 U.S.C. Sections 1408 and 1409.

I'll begin with the facts. This case has a multi-faceted factual background that the Court will not discuss at length in this bench ruling. However, the Court feels the following facts bear some discussion in terms of setting the stage for its approval of the proposed compromise.

On September 6th, 2022, several creditors of Goodman Networks, Inc., the debtor in this Chapter 7 bankruptcy, filed an involuntary petition against the debtor, thereby initiating this bankruptcy case and creating the estate. The Court entered its order for relief against the debtor on December 12th, 2022, and the Trustee was thereafter appointed as the Chapter 7 Trustee for the estate.

The debtor has two wholly-owned subsidiaries who have not filed bankruptcy, the interest in which are presently property of the estate: number one, GNET ATC, LLC, and, number two, Multiband Field Services, Inc. Various directors and officers of the debtor were also directors and officers of GNET. GNET holds commercial tort claims relevant to these proceedings, and GNET is also an insured or beneficiary under certain insurance policies to which the bondholders and FedEx assert interests in or against.

Multiband housed all employees of the debtor and its

subsidiaries. As such, Multiband holds rights under various workers' comp policies and certain funds put up as securities for the same. Generally speaking, the bondholders hold junior liens against all such funds and collateral to the extent not properly applied by the insurance company.

Pre-petition, Mr. Frinzi and potentially other insiders of the debtor orchestrated a transfer of $44 million from the debtor and/or GNET to MBG Holdings, formerly known as American Metals Recovery and Recycling, what I'll refer to as AMRR. This transfer is one of the main events giving rise to some of the commercial tort claims and insurance-policy claims.

Without getting too deep into the facts of the transfer, the Court will suffice it to say that the Trustee asserts that he has before him a factual and legal mess on which he and the settling creditors have taken extensive discovery, threatened litigation, and future bankruptcy filings. However, the Trustee has succeeded in convincing AMRR to retain a chief restructuring officer to liquidate it and its subsidiary assets for the benefit of the estate.

The Court has approved two transactions with AMRR, each of which closed successfully and the proceeds of which are now property of the estate. Both the bondholders and FedEx assert interest with respect to the estates and their subsidiaries' rights against AMRR.

As of the petition date, the bondholders assert that

the debtor owed $18,738,733 on its 8-percent senior secured notes issued in May of 2017 in the original principal amount of $122.5 million. Claims relating to the bonds are found at Claim Numbers 13 and 14 with respect to proofs of claim, and these two proofs of claim are duplicate.

ARRIS filed Proof of Claim Number 29 in this bankruptcy case, asserting a general unsecured claim in the amount of just over $30 million. ARRIS asserts that a pre-petition escrow exists in the amount of $228,987.38 at Texas Partners Bank to secure the ARRIS claim in part.

FedEx filed a Proof of Claim Number 32 in this bankruptcy case, asserting a general unsecured claim against the estate for just over $81 million. FedEx asserts the same claim against GNET. These claims are based upon the fact that the debtor and GNET stopped paying FedEx under the terms of their master services agreement which had the effect of amassing funds which the debtor and GNET shortly thereafter used to transfer to various third parties, which transferred funds also underpin many of the Trustee's commercial tort claims.

FedEx has asserted that just over 76 million of that cash was its stolen property and reserved the right to assert a constructive, actual, or resulting trust for its benefit against such funds or any proceeds thereof held by the debtor and the subsidiaries such that FedEx and not the estate would

have the right to recover these funds and any proceeds thereof, including assets acquired with the same.

On December 21st, 2023, the Court entered a cash-collateral order wherein the bondholders agreed to permit a portion of their asserted cash collateral to be used by the Trustee to pay certain professional claims in part, which the Trustee did. The cash-collateral order reserved the issue of granting the collateral agent a replacement lien with respect to said funds to be heard by the bankruptcy court if a settlement of outstanding issues was not reached.

Beginning in March of 2023 and as amended twice thereafter, the Trustee requested authority under Bankruptcy Rule 9019 to enter into a settlement between the estate, the bondholders, and Prosperity Bank whereby Prosperity would transfer over $4.7 million to the Trustee and then the Trustee would subsequently transfer over 4.3 million of these funds to the bondholders, retaining $150,000 as an agreed surcharge and $275,000 as free and clear settlement proceeds for the estate.

After months of discovery and motion practice, including a two-day evidentiary hearing held by this Court on October 10th and 11th, 2023, the Court ruled on February 7th, 2024 to approve the Prosperity settlement. This ruling has been appealed by both FedEx and ARRIS.

On October 27th, 2023, FedEx filed a complaint in the United States District Court for the Northern District of

Texas, initiating Civil Action Number 23-2397, asserting claims and causes of action under RICO on the same facts and circumstances described above and in certain pending adversary proceedings filed by the Trustee against multiple defendants, many of whom are also defendants of the Trustee with respect to the commercial tort claims.

Originally, FedEx asserted a constructive-trust claim against what the Trustee believed was property of the estate or would become property of the estate if the Trustee's fraudulent transfer claims were to be successful. The Court would note that FedEx had reserved these same claims in this Court from time to time on the record.

Thereafter, the Trustee filed a complaint against FedEx before this Court on November 15th, 2023, initiating Adversary Proceeding Number 23-3091, asserting a stay violation, and by which the Trustee sought declarations that FedEx's asserted interests were not valid or enforceable.

I have skipped over numerous contested hearings before this Court as well as intercreditor disputes between and among the Trustee, ARRIS, the bondholders, and FedEx. Suffice it to say that prior to this settlement, almost the only thing this group agreed upon was that Goodman Networks should be in bankruptcy under Chapter 7.

On January 23rd, 2024, the Trustee met with FedEx, the bondholders, and ARRIS about these and other issues in a

structured mediation conducted by the Honorable Steven Felsenthal. After the mediation, FedEx amended its district court complaint to withdraw the constructive-trust claim, and the Trustee agreed that FedEx's clams as asserted in the amended complaint are personal to FedEx and not property of the estate. Thereafter, the Trustee dismissed the FedEx adversary proceeding without prejudice.

The instant 9019 motion was filed on February 29th, 2024, denoting the global settlement between each of the aforementioned parties and an order, a proposed form of order was later filed on the docket at Docket 509, basically embodying the proposed global settlement.

I'll go to the legal standard. I have had reason to share this Court's opinion on the standard for approval of a compromise under Bankruptcy Rule 9019 on many occasions in this case. Pursuant to Bankruptcy Rule 9019(a), the Court may approve a compromise and settlement of claims held by the bankruptcy estate. Compromises are desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated, and costly. I'll cite to you there from Jackson Brewing at 624 F.2d 599.

The burden is on the Trustee, but he need only show that a compromise falls within the range of reasonable litigation alternatives. Approval of a compromise lies within the sound discretion of the bankruptcy court. To assure proper

compromise, the bankruptcy judge must be apprised of all necessary facts for an intelligent, objective, and educated evaluation.

There are two general standards against which a proposed compromise and settlement is to be assessed by the bankruptcy court: number one, whether the agreement is fair and reasonable and, number two, whether the agreement is in the best interest of the estate. In determining whether a settlement is fair and equitable -- I think I said fair and reasonable earlier, I apologize.

In determining whether a settlement is fair and equitable, the Fifth Circuit has articulated five factors for the Court to consider: number one, the probability of success in the litigation with due consideration for the uncertainty in fact and law; number two, the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, including the difficulties, if any, to be encountered in the matter of collection; number three, the paramount interest of the creditors and a proper deference to their reasonable views; number four, the extent to which the settlement is truly the product of arms-length bargaining and not fraud or collusion; and number five, all other factors bearing on the wisdom of the compromise.

I cite to you there from Jackson Brewing and the Fifth Circuit's decision in Foster Mortgage.

Courts in this district have recognized the unique role of the Chapter 7 Trustee in the bankruptcy process as an independent fiduciary with a completely different perspective and interest in a bankruptcy estate than either a debtor or an individual creditor. The Trustee is expected to be a gatekeeper and to exercise his reasonable business judgment in deciding what actions to bring and what are not worth the expense. The Trustee is a fair, balanced, and experienced official who can be dependent upon to exercise good litigation judgment.

I cite to you there from Judge Jernigan's opinion in In re Cooper, 405 B.R. 801.

These are just a few of the reasons that bankruptcy courts grant deference to a Trustee's business judgment in proposing a compromise so far as the compromise falls within the range of reasonable litigation alternatives as determined by the Court's independent evaluation.

The Trustee's counsel and its allied settling parties advanced several arguments in support of the reasonableness and the wisdom of the compromise. They can generally be summarized as follows.

Number one, the proposed compromise would eliminate the need to engage in multiple rounds of lengthy expensive litigation against each of the estate's largest creditors in which the estate's chances of success are uncertain. Given the

Court's approval, the settlement would preserve the estate's resources, which the Trustee asserts would be better spent pursuing litigation against third parties and otherwise monetizing the estate's assets.

Number two, the proposed compromise is supported by an overwhelming majority of the estate's creditors who have supported it as a fair settlement that maximizes the benefit to all classes of creditors.

Number three, the specific settlements with the bondholders, FedEx, and ARRIS regarding the allowance of claims, the recognition of liens, the rights to the proceeds of the crime and D&O policies, the AMRR liquidation, and the sharing percentages are fair and reasonable given the significant uncertainty in fact and law as to the several disputes underlying these issues.

Number four, the Trustee argues that the proposed compromise is truly the result of extensive arms-length negotiations as demonstrated by the incorporation of Judge Felsenthal as a mediator.

Number five, the proposed compromise would allow the Trustee to both, A, fund the litigation which the Trustee believes would be a substantial value to the estate and, B, start making material payments on legitimate debt right away.

The objecting adversary defendants have a single narrow objection. They argue that FedEx's claims are not

unique to it and instead belong to the estate. They, therefore, posit that if the Court were to approve the proposed compromise and allow FedEx to pursue its claims in district court, the estate could potentially lose millions of dollars, frustrating fundamental bankruptcy policy and hindering the effective administration of the bankruptcy estate.

In several replies, the Trustee, FedEx, and the bondholders each advanced arguments in support of the Court's approval of the proposed compromise. FedEx challenges specifically whether the objecting adversary defendants have the necessary standing to contest the 9019 motion. Further, it argues that the objecting adversary defendants' arguments constitute an improper collateral attack on FedEx's personal claims against them in district court. Finally, FedEx and the bondholders argue that the compromise satisfies the 9019 standard articulated by the Fifth Circuit.

In the Trustee's reply, he notes that the Chapter 7 Trustee's primary concern is to protect the bankruptcy estate and its assets and that because, number one, FedEx has certain claims which are personal to it and, number two, FedEx has amended its district-court complaint to remove any relief related to the constructive-trust claim. The Trustee believes that the potential harm from a violation of the automatic stay has now been remedied and is at least partially mooted going forward.

The Court will first briefly address the parties' arguments regarding standing before turning to the five-factor test. I won't spend a great deal of time addressing standing because of two things: number one, because one of the issues that were addressed by the objecting adversary defendants is one that frankly concerned the Court, the fact that the Trustee and FedEx will be pursuing the same targets which could potentially negatively affect the estate's ability to settle with or collect from the objecting adversary defendants if they were to be found liable. And, secondly, because the objecting adversary defendants failed to overcome their burden to rebut the case in chief put on by the Trustee. For those two reasons, the Court won't address standing.

The settlement herein may not be perfect. There may be holes in it, as Mr. Goodman's counsel stated, and the Trustee readily admitted in his papers. But perfect is not the standard, nor is perfect an option when you consider the fact that the four sophisticated parties to the settlement, each of which approaches this case from varying positions of strength or weakness under differing litigation scenarios, are attempting to settle what has been a year or more of nearly constant litigation.

As I will discuss a little bit further, no creditor of this estate has objected to this settlement. Only litigation targets who brought forth no evidence of a concrete

injury other than the fact that they're being pursued by two different plaintiffs. The fact that one set of facts could generate two sets of litigation is by no means unique. This won't be the first or the last time that a defendant is sued by more than one party.

So that's all I'll have to say on standing. I'll turn to the 9019 factors. I'll start with the extent to which the settlement is truly the product of arms-length bargaining and not of fraud or collusion.

Well, this one is a no-brainer, and it was not hotly contested. The parties are highly sophisticated and represented by very able counsel. At every stage of this bankruptcy, these parties who again approached this case from very different legal positions addressed the various issues independently, vigorously, and they formed different alliances in battle multiple times in this case. The term they coined "fratricide" may be hyperbolic, but it is not ill-fitting.

The Court flatly encouraged the parties to try to sit down and reach an agreement on numerous occasions in open court for the sake of the bankruptcy case, the sake of creditor and Trustee relations and, candidly, for the sake of these individual players' pocketbooks. I take absolutely no credit for this settlement, of course. But I only note that the Court believes that a resolution of intercreditor squabbles is the only path forward to maximize the value of this bankruptcy

estate and allow the Trustee to do the work the Bankruptcy Code tasks them to do.

I would further note and thank Judge Steven Felsenthal for his role as mediator. He was the former chief judge of this Court, a great judge, and I personally know him from a former life to be a respected and substantively excellent mediator which was seconded and thirded by the parties in this case. In sum, I have no question that the settlement is truly the product of arms-length bargaining.

The next factor is the probability of success in litigation with due consideration for the uncertainty in fact and law. It is important to note here that the objecting adversary defendants focus on one and only one piece of litigation, the FedEx district-court action. This action is but one in a long line of litigation in this case. As the Trustee details in his motion and at the hearing, this settlement addresses global issues between and among the Trustee, the bondholders, ARRIS, and FedEx.

For reference, the following constitutes a very short list of the matters which the parties have already litigated, not counting the adversary proceedings against numerous third-party defendants, which if history is a guide, would have generated further 9019 fights.

Number one, not one, not two, and not even three but four rounds of hearings on the bondholder and Prosperity

settlement counting the pre-hearing evidentiary motions. Number two, the sale of Onepath to Albers. Number three, the sale of the fiber business to Alliance. Number four, whether the former directors and officers of the debtor and GNET are able to access policy benefits for their defense costs and litigation. And, number five, the use of cash collateral.

There was already one pending appeal, which is being settled pursuant to this global compromises. And all this litigation is being born by a "cause of action rich but cash poor" estate.

The FedEx district-court action and the resulting automatic-stay complaint filed by the Trustee is but one piece of litigation that comes in a long line of disputes in this case. In this Court's estimation, the fact that FedEx filed the district-court action with no forewarning and the fact that the automatic-stay complaint was filed is truly the culmination of the intrinsic friction between the parties' legal positions, negotiating positions and, frankly, colorful personalities which all came to a tipping point.

To pigeonhole a discussion of the "probability of success in litigation" factor to merely a discussion of the FedEx district-court action in the stay litigation is to do an injustice to the breadth of the disputes cataloged in the motion and the multitude of the issues settled. Those issues are detailed in the motion and the fact of their existence is

incorporated herein. Nevertheless, given that this is the only area that the objecting adversary defendants challenge, the Court will narrow its focus.

I will not mince words. I certainly would have preferred that FedEx give notice to the Trustee and to this Court of the intent to file the district-court action. The Court is very familiar, as FedEx cited in its papers, with the Seven Seas and Educators Trust cases and their progeny. But where I quibble with FedEx's proposition is that this Court views the Fifth Circuit holdings in Chesnut and in Seven Seas as distinct and different.

Seven Seas addresses whether the same operative facts might give rise to personal and derivative claims. To be clear, a derivative claim is a claim that belongs to the estate. The Court has stated more than once that Chesnut stands for the simple proposition in questioning whether the stay applies: ask for permission, not for forgiveness. Although the Court agrees with FedEx that it holds personal claims and that the estate plainly could not bring every claim in the district-court action, nevertheless, whether any of the claims FedEx asserted arguably belong to the estate was not as plain in the Court's estimation. Hence, the automatic stay complaint.

But I won't harp on this issue. Why? Because that is the import of the settlement. Any harm, any damage was that

belonging to the Trustee and to the estate and that is being settled. The settlement on this point is complex and nuanced, but it is settled nonetheless.

Speaking to the substance of the argument of whether the FedEx claims are personal or derivative, the Court will again note, as I have in prior opinions, that Rule 9019 does not require a bankruptcy judge to hold a full evidentiary hearing or even a mini-trial before a compromise can be approved. Rather than being forced to decide all questions of law and fact, this Court need only determine whether the settlement falls below the lowest point in the range of reasonableness.

The Fifth Circuit has further advised in the Matter of Jackson Brewing that it is sufficient for a bankruptcy court to find that a substantial controversy exists for which there is an uncertain outcome in litigation.

9019 does not require a bankruptcy judge to hold a full evidentiary hearing or even a mini-trial before a compromise can be approved. Rather than being forced to decide all questions of law and fact, courts have consistently held that a court need only canvas the issues to see whether the settlement falls below the lowest point in the range of reasonableness.

Here, there is no question this settlement satisfies this standard. The objecting adversary defendants pull one

line out of Buccaneer, which is 912 F.3d 291, to primarily rely upon, and that line is, "As long as the injury a creditor is pursuing against a third party does not stem from the depletion of estate assets, the injury is a direct one that does not belong to the estate."

But a fulsome reading of Buccaneer yields more context. The situation in the instant case is factually inapposite from Buccaneer. In Buccaneer, the debtor was a potential defendant, not a plaintiff. The plaintiff in Buccaneer sought to bring a tortious interference claim. The Fifth Circuit found that an injury like Burton's in that case from an improper firing were clearly personal, but it noted that the principle was the same whether "the third party engages in tortious conduct that causes harm to a particular creditor," citing to you there from Page 295.

The Fifth Circuit stated plainly that the factual situation faced by the parties in Buccaneer was distinctly different from the one presented in Seven Seas. In Seven Seas, both the creditor and the debtor had claims against third parties, so the dispute was about which one was the proper plaintiff or whether both could be. That is precisely the situation here, where both the creditors and the estate have claims against third-party defendants.

Reading to you from Seven Seas, "It is entirely possible for a bankruptcy estate and a creditor to own separate

claims against the third party arising out of the same general series of events and broad course of conduct."

The court states in Seven Seas:

"In sum, we believe that the claims brought by the bondholders allege an injury that is not merely derivative of an injury to Seven Seas and that Seven Seas could not have asserted the claims as of the commencement of the bankruptcy case. That's not to say, of course, that Seven Seas might not also have suffered its own direct injury because of some wrongdoing on the part of Chesapeake, or could not have brought any claims against Chesapeake as the commencement of the case.

"Indeed, the Trustee did bring claims against Chesapeake on behalf of the estate alleging, among other things, that Chesapeake breached duties that it owed to Seven Seas and interfered with management duties of Seven Seas. But the bondholders' claims and the estate's claims are not mutually exclusive. there is nothing illogical or contradictory about saying that Chesapeake might have inflicted direct injuries on both the bondholders and Seven Seas during the course of the dealings that formed the backdrop of both sets of claims."

Here, FedEx asserts that the debtor and, more

specifically, Mr. Goodman and Mr. Frinzi as directors and officers of the debtor, fraudulently submitted invoices to FedEx under the master services agreement causing FedEx to forward payments of over $80 million for which there was no legal basis under the terms of that contract. By the submission of these invoices and the larger alleged racketeering scheme, FedEx was directly harmed and the debtor would be unable to assert a direct injury from the specific wrongdoing that FedEx complains of.

To borrow language from the Seven Seas court, "It is thus not surprising that the injury that this claim alleges is not derivative of the injury to the estate." The FedEx claim is not derivative because it exists whether or not the payments to the objecting adversary defendants were fraudulent.

Finally, as I mentioned at the hearing, the objection reads very much like a collateral attack on the district-court complaint, which is well outside of this Court's purview. As the Fifth Circuit noted in Seven Seas, again, it bears emphasizing that:

> "Our holding here is a narrow one that in no way passes on the merits of the claims. It's not our place to consider whether the creditors' allegations are sufficient to state a cause of action under Texas law or to speculate as to what set of facts might ultimately be proven in support of recovery. Simply

put, the fact that the creditor ultimately may be unable to prevail on the claims does not render the claims property of the estate."

So here too, even though the Court is not called upon to determine the merits, there exists substantial controversy to be settled by FedEx and the estate, which they have. And this substantial controversy is one but a dozen of controversies and disputes, large and small, that are compromised by the global settlement. For these reasons, the settlement satisfies the probability of success in litigation with due consideration for the uncertainty prong.

The Court will now address the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay.

The Trustee credibly testified that he believes that litigating all of the various disputes that are made part of the global settlement, including the automatic-stay litigation, would be complex, lengthy, and costly. The Trustee has testified multiple times in multiple hearings as to these creditors' capacity for, let's say, independence, self-protection, and perhaps sometimes obstinance, and that, therefore, he believes that any litigation would likely result in multiple rounds of appeal, which we've already seen the makings of, and that the estate would never be able to successfully litigate claims against third parties and thereby

monetize the assets of the estate for fear of tripping yet another dispute between the bondholders and the secured creditors and the estate.

Therefore, there's no question that this factor is satisfied. I'll now turn to whether the compromise serves the paramount interest of creditors with proper deference to their reasonable views.

In Foster Mortgage, 68 F.3d 914, the Fifth Circuit addressed the importance of whether the proposed compromise serves the paramount interest of the creditors with proper deference to their reasonable views. In the instant case, the creditors representing well over 90 percent of the estate's debt unanimously support the settlement that has been proposed and actively and independently, with the advice of independent and able counsel, participated in negotiations to resolve these issues.

This is incredibly important in the Court's mind because the proposed compromise is not simply being foisted upon the creditors over their objection. Instead, the settlement being proposed today was handcrafted by the estate's largest shareholders and, therefore, deserves the Court's deference to a significant degree.

The final factor is any other factor that's bearing upon the wisdom of the compromise. Although it's been stated at least once thus far in this bench ruling, the Court notes

that the proposed compromise will maximize the efficient monetization of the assets of the estate. The settlement will also pacify existing disputes over the distribution of proceeds from insurance claims, the distribution of proceeds from judgments obtained on the commercial tort actions, future liquidation and monetization of AMRR, and further distribution of those proceeds, the outstanding reservation of rights by the collateral agent regarding a replacement lien for its collateral funds already paid to estate's professionals and, lastly, the allowance of claims of the estate's largest creditors in definitive amounts including the bondholders' status as secured creditors.

Finally, the Court finds that it bears repeating that the only objection to the proposed compromise was filed by the objecting adversary defendants, which are not creditors of the estates but, rather, litigation targets.

Based upon the foregoing, the Court will overrule the objection and approve the global settlement as embodied in the form of order. I'll now turn to that order as I have minor comments which were mostly aimed at the incorporation of the Court's ruling and some jurisdictional issues.

With regard to the proposed form of order, and I'm again speaking to that which was filed at Docket 509, as you might expect, I'd ask that you incorporate this bench ruling into the preamble of the order. I ask that, with respect to

the resolution of the cash-collateral dispute, that the parties submit a separate form of final order on cash collateral after this settlement goes effective so that we kind of button that motion up for sake of the docket.

And I'll ask that, again, the order note the existence and the overruling of the objection to the settlement. And, finally, with regard to this order, I'd like a statement that the Court retains exclusive jurisdiction as to the enforcement and interpretation of this settlement but obviously not with respect to the separate district-court action that is within the purview and jurisdiction of I think it's Judge Scholer in the district court.

Do the parties have any questions regarding the Court's ruling or with regard to the proposed form of order?

(No audible response)

THE COURT: Again, if you're on the phone, you can press *6 to unmute if you have any questions.

MR. RUKAVINA: Your Honor, this is Davor Rukavina. Thank you for your thoughtful ruling and for your time. We have no questions. I'm sure that we will rapidly make the changes that Your Honor requested. We'll file a redline, and we'll upload the order and we'll do a cash-collateral order.

THE COURT: Okay. Thank you very much, Mr. Rukavina.

Anything else?

(No audible response)

THE COURT: All right. That concludes the matter today, and the Court will stand adjourned. You guys have a great day.

THE CLERK: All rise.

(Proceedings adjourned at 4:41 p.m.)

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C E R T I F I C A T I O N

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

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DIPTI PATEL, AAERT CET-997

Expires: December 6, 2026

LIBERTY TRANSCRIPTS DATE: April 4, 2024